



PUBLIC NOTICE

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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON PETITIONS FOR WAIVER TO DEPLOY 700 MHZ PUBLIC SAFETY BROADBAND NETWORKS

PS Docket No. 06-229

Comment Date: October 18, 2010

Pursuant to the Commission's *Waiver Order*,¹ the Public Safety and Homeland Security Bureau (Bureau) seeks public comment on twenty-three petitions for waiver filed by various entities (Petitioners) seeking authority to deploy public safety broadband systems on a local or regional basis in the 10 megahertz of 700 MHz public safety broadband spectrum currently licensed to the Public Safety Spectrum Trust (PSST) (763-768/793-798 MHz).²

As an initial matter, we deny the request by the City of Chicago, which sought action on its petition without public comment.³ Chicago argues that the Commission's *Waiver Order* is "silent as to the procedural treatment" of petitions made subsequent to that order, and that because Chicago's request is consistent with the relief granted in the *Waiver Order*, further public comment is unnecessary.⁴

Chicago's characterization of the *Waiver Order* is incorrect. Rather, while Chicago specifically notes that the Commission indicated that it expected that the Bureau would be able to act quickly on

¹ Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket No. 06-229, *Order*, FCC 10-79 (rel. May 12, 2010) (*Waiver Order*).

² *See generally*, Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, 23 FCC Rcd 8047 (2008) (*700 MHz Second Further Notice*); *see also, generally*, Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, 23 FCC Rcd 14301 (2008) (*700 MHz Third Further Notice*).

³ Letter from Jose A. Santiago, Executive Director, Office of Emergency Management and Communications, City of Chicago, to the Public Safety and Homeland Security Bureau (June 23, 2010) (Chicago Letter); Expedited Waiver Request of the City of Chicago, PS Docket No. 06-229 (filed June 25, 2010).

⁴ Chicago Letter at 1-2.

future waiver requests, Chicago omits the fact that the Commission expected the Bureau's action "after issuance of an appropriate Public Notice seeking comment when a new waiver is received."⁵ Accordingly, we find that it was the expectation of the Commission that, as a procedural matter, the Bureau would seek comment on new waiver requests. Moreover, we find that public comment on Chicago's request and the requests made by the other Petitioners will further the Bureau's consideration of these petitions not only individually, but as they relate to each other, to the prior waiver recipients' plans, and to the Commission's overall interoperability goals. While Chicago argues generally that "delay" from a public notice "would severely impact the processing of waiver requests and in many instances would further impair petitioners' ability to seek available financing sources during the comment period when uncertainty would exist,"⁶ Chicago has not presented any specific information to this effect. Its objections, therefore, are speculative, and do not outweigh the benefits of providing a clear and open process for public consideration of the waiver requests.

We seek comment generally on these petitions. We also seek comment on specific aspects of the requested waivers that will enhance our ability to determine if grant of waiver relief is appropriate. In particular, we seek comment on four issues: (1) eligibility under Section 337; (2) addressing overlapping requests; (3) issues related to the timing of Bureau action and the volume of waivers received in relation to the Commission's overall interoperability goals; and (4) any impact such additional waivers may have on the budget of the Public Safety Spectrum Trust (PSST).

With respect to the first question, we note that the initial *Waiver Order*, consistent with the tentative conclusion in the *700 MHz Third FNPRM*, limited network users to those entities under Section 337 of the Communications Act whose "sole or principal purpose" is "to protect the safety of life, health, or property" and who meet the remaining requirements of Section 337.⁷ We note, however, that several petitions include signatories such as investor-owned utilities or other entities whose eligibility is not readily apparent. We seek comment on how to address these petitions.

With respect to the second question, we note that it appears several recent waiver submissions either overlap geographically with each other, or with previously granted waivers.⁸ In the *Waiver Order*, the Commission expressed a clear preference for waiver requests at the state level, and included provisions requiring smaller jurisdictions that were granted relief to seek approval of the state before pursuing deployment.⁹ In this regard, the apparent conflict between the waiver requests of New York

⁵ Chicago Letter at 2; *Waiver Order* at 5167, ¶ 68.

⁶ Chicago Letter at 2.

⁷ *Waiver Order* at 5155-56, ¶ 34; see 47 U.S.C. § 337(f), *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, 23 FCC Rcd 14301, 14404-07 ¶¶ 322-27 (2008).

⁸ See, e.g., note 14, *infra*, including Nassau County, NY and New York State (previously granted); Greater Harris County 9-1-1 Emergency Network and Harris County, TX; the Louisiana Statewide Interoperability Executive Committee and each of (1) the New Orleans Urban Area Security Initiative Region 1, and (2) the City of Baton Rouge, LA; the Southeastern Pennsylvania Regional Task Force and each of (1) the City of Philadelphia, (2) the County of Delaware, PA, (3) the County of Bucks, PA, and (4) the County of Chester, PA; and the Commonwealth of Pennsylvania and each of the constituent Pennsylvania waiver requests, including the several counties and two "Task Forces".

⁹ *Id.* at 5161-62, ¶¶ 49-55.

City and the State of New York were also resolved, given the State's consent and the coordination among the parties.¹⁰ Should we use the same mechanism to resolve any conflicts with respect to these more recent waivers?

With respect to the third question, we seek comment on the appropriate timeframe for the Bureau's action on these additional waivers. We note in particular the Commission's expectation that the Bureau will be able to act expeditiously on waiver requests submitted subsequent to the *Waiver Order*, once public comment is sought.¹¹ We also note, however, a number of additional factors for consideration: the volume of additional waiver requests submitted; the ongoing nature of Long Term Evolution standards and equipment development; the ongoing work of the Emergency Response Interoperability Center (ERIC); related demonstration network efforts sponsored by the Public Safety Communications Research (PSCR) program (which is a partnership between the National Institute of Standards and Technology (NIST) and the National Telecommunications and Information Administration (NTIA)) and the District of Columbia; and the recent submission of comments to the Bureau's Public Notice on technical standards public safety broadband deployments.¹² We note in particular the volume of waivers already granted and the number of new waivers may have particular implications for the number of Public Land Mobile Network (PLMN) ID numbers that would need to be utilized, and correspondingly impact roaming and interoperability.¹³ How should the Bureau take these issues into account in addressing these additional waivers? Should the Bureau require any further waiver recipients to wait until initial interoperability rules are adopted before proceeding? Should we limit the number of waivers, require consolidation of regional networks, or otherwise act to avoid an excessive number of PLMN IDs? Will addressing additional deployments on a waiver basis adversely impact the Commission's interoperability goals? Are there additional conditions or circumstances that would guard against this outcome? Should the Bureau allow additional interoperability showings to be filed? Are there changes to that process that would be beneficial?

Finally, we note that the Bureau recently approved the submitted budget by the PSST for the administration of the leases associated with the previously granted waiver requests.¹⁴ How will these additional waivers impact that budget? Should we permit or require the same fees for any additional leases? Should the administrative fees for all parties be adjusted? Should a new or amended budget be submitted?

¹⁰ *Id.* at 5163, ¶ 53.

¹¹ *Id.* at 5167, ¶ 68.

¹² Public Safety and Homeland Security Bureau Seeks Comment on Interoperability, Out of Band Emissions, and Equipment Certification for 700 MHz Public Safety Broadband Networks, PS Docket No. 06-229, *Public Notice*, 25 FCC Rcd 5486 (2010).

¹³ The National Telecommunications Public Safety Council (NPSTC), for example, recommends that if each public safety network is to receive a PLMN ID, that the number of such networks should not exceed 100. National Telecommunications Public Safety Council, *NPSTC 700 MHz Public Safety Broadband Task Force Report and Recommendations*, Section 6.3.1 (September 4, 2009), available at http://www.npstc.org/documents/700_MHz_BBTF_Final_Report_0090904_v1_1.pdf.

¹⁴ Implementing a Nationwide Broadband Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, DA 10-1494 (rel. Aug. 11, 2010).

We also encourage commenters to address any other issues that they consider to be material to the Bureau's consideration of the petitions.

The state or local jurisdictions seeking waiver are: (1) Las Vegas Metropolitan Police Department, Washoe County Sheriff's Department, the Washoe Regional Communications System, the Nevada Department of Transportation, and NV Energy; (2) Nassau County, NY; (3) the State of Maryland; (4) Delaware County, PA; (5) Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry and York Counties, PA (the South Central Task Force); (6) the Louisiana Statewide Interoperability Executive Committee; (7) the City of Chicago, IL; (8) the Georgia Broadband Alliance; (9) Lackawanna County, PA; (10) Fairfax County, VA; (11) Bucks County, PA; (12) the City of Philadelphia, PA; (13) Greater Harris County 9-1-1 Emergency Network, TX; (14) the State of Florida; (15) the Seattle Urban Area Partners, including the Cities of Seattle and Tacoma and surrounding counties and the State of Washington; (16) Harris County, TX; (17) the New Orleans Urban Area Security Initiative Region 1; (18) the State of Oklahoma; (19) the City of Baton Rouge, LA; (20) the County of Chester, PA; and (21) City of Philadelphia and the Counties of Bucks, Chester, Delaware and Montgomery, PA (the Southeastern Pennsylvania Regional Task Force); (22) the Commonwealth of Pennsylvania; and (23) the City of Tucson, AZ.¹⁵

¹⁵ See Las Vegas Metropolitan Police Department, Washoe County Sheriff's Department, the Washoe Regional Communications System, the Nevada Department of Transportation, and NV Energy, representing the State of Nevada 700 MHz Broadband Wireless Network (SONNet) Request for Waiver – Expedited Action Requested (filed May 13, 2010); Nassau County, NY Request for Waiver (filed May 14, 2010); State of Maryland Request for Waiver (filed May 21, 2010); County of Delaware, PA Expedited Request for Waiver (filed May 26, 2010) (Delaware County Petition); South Central Task Force Expedited Request for Waiver (filed May 28, 2010); Louisiana Statewide Interoperability Executive Committee Request for Waiver (filed June 16, 2010); Expedited Waiver Request of the City of Chicago (filed June 25, 2010); Georgia Broadband Alliance Request for Waiver, on behalf of identified Georgia counties and cities (filed June 25, 2010, amended Aug. 2, 2010); Lackawanna County Expedited Request for Waiver (filed June 28, 2010); Fairfax County, VA Request for Waiver (filed June 29, 2010); County of Bucks, PA Request for Waiver (filed July 7, 2010); City of Philadelphia, PA Expedited Request for Waiver (filed July 8, 2010); Greater Harris County 9-1-1 Emergency Network Expedited Waiver Request (filed July 27, 2010); State of Florida Request for Waiver (filed Aug. 3, 2010); Counties of King, Snohomish, Pierce, Thurston, the Cities of Seattle and Tacoma, the Eastside Public Safety Communications Association, Valley Communications, and the State of Washington (filed Aug. 5, 2010)(seeking to add to the waiver previously granted to Seattle); Harris County, TX Request for Waiver – Expedited Action Requested (filed Aug. 11, 2010)(Harris County Bignet Group); Request of the New Orleans Urban Area Security Initiative Region 1 for Expedited Waiver (filed Aug. 17, 2010); State of Oklahoma Expedited Waiver Request (filed Aug. 19, 2010); Baton Rouge, LA Expedited Request for Waiver (filed Aug. 19, 2010); Chester County, PA Request for Waiver (filed Aug. 23, 2010); Southeastern Pennsylvania Regional Task Force Request for Waiver (filed Aug. 24, 2010); Commonwealth of Pennsylvania Expedited Request for Waiver (filed Aug. 27, 2010); City of Tucson, AZ Request for Waiver (filed Aug. 27, 2010).

In addition to its waiver request, Harris County, TX also filed an interoperability showing. See, Harris County Interoperability Showing (filed Aug. 11, 2010). However, because Harris County does not currently possess a waiver to deploy a 700 MHz broadband network, such a filing is premature. Accordingly, we dismiss Harris County's interoperability showing without prejudice. See also, Implementing a Nationwide Broadband Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, DA 10-1540, at n. 6 (rel. Aug. 17, 2010) (*Tolling Order*) (dismissing, without prejudice, the interoperability showing by the City of Chicago).

Comment Filing Procedures

Interested parties may file comments on the above-referenced petitions on or before October 18, 2010. All comments should reference the appropriate petition(s) and PS Docket No. 06-229.

Comments may be submitted using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹⁶ Comments can be filed through the Commission's ECFS filing interface located at the following Internet address: <http://www.fcc.gov/cgb/ecfs/>. Comments can also be filed via the Federal eRulemaking Portal: <http://www.regulations.gov>.¹⁷ In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. **Please Note:** The Commission's former filing location at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 permanently closed on December 24, 2009.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
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For further information about this Public Notice, please contact Jennifer Manner at (202) 418-3619, jennifer.manner@fcc.gov.

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¹⁶ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

¹⁷ Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.